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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,310	05/26/2000	Steven Yatchak	17297-001700US	8172

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EXAMINER

FISHER, MICHAEL J

ART UNIT PAPER NUMBER

3629

DATE MAILED: 05/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/580,310

Applicant(s)

YATCHAK ET AL.

Examiner

Michael J Fisher

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/22/02.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 25 and 28 is/are allowed.
- 6) ☐ Claim(s) 1-5, 7-16, 21-24, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) 6 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,7,8,13,14,26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Dispenza et al. (Dispenza).

Dispenza discloses an apparatus (fig 2) with a panel (12) connected to a pair of adjustable brackets (14) that are movable along the longitudinal axis of posts (13) and further coupled to the post (fig 2). Dispenza further discloses a housing about the post (14) with an arm (18) coupled to the housing (fig 4) via a connector (30). The panel is connected to the arm via a coupling mechanism (between 24,21 as best seen in fig 5). The arm includes an aperture (through which screw member 30 passes). Dispenza further discloses a cap (top piece 15) and a screw (30) insertable into the aperture which arrangement couples the panel to the arm. Dispenza further teaches a second bracket assembly coupled to the post and a second panel (fig 1) coupled to the second bracket.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 10,11,16,21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dispenza.

Dispenza discloses an assembly as discussed above. Dispenza does not, however, teach a base with a stabilizer attached to the base, the shelf as being clear, or the method of claims 21-24. However, the apparatus as disclosed by Dispenza could be used in the manner as claimed in claims 21-24, thereby anticipating the claims of the instant invention.

It would have been obvious to one of ordinary skill in the art to have a base with a stabilizer on the base to keep it the apparatus stable. It further would have been obvious to make the shelves of a clear material for aesthetic purposes.

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Claims 3-5 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dispenza as applied to claims 1,2,7,8,13,14,26,27,10,11,16,21-23 above, and further in view of O'Brien.

Dispenza discloses an assembly as discussed above. Dispenza does not, however, teach an insert within the housing.

O'Brien teaches a bracket (14) which couples a panel (22) to an arm (10). O'Brien further teaches an insert (pieces 20) within the housing (14). O'Brien further discloses a locking bar (21) which is disposed between the housing and the insert (fig 3) and which locking bar is a screw (fig 3). The housing has a cylindrical section (fig 3). The insert comprises a hollow sleeve, which is not tubular, but it is round on the outside with a hollow section, with an elongate slot (inside of sections 20). When the locking bar is forced against the sleeve, it constricts.

It would have been obvious to one of ordinary skill in the art to modify the structure as disclosed by Dispenza with the locking mechanism as taught by O'Brien to avoid damaging the post. It further would have been obvious to make the interior opening of the inserts round, and thus to provide a true tubular cross section to allow it to be used with the tubular legs of Dispenza.

Allowable Subject Matter

Claims 25 and 28 are allowed.

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Claims 6 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance: As to claim 25, the prior art does not teach a bracket that is pivotal. While such a modification is known, it would destroy the reference to make such a modification and therefore would not be obvious to one of ordinary skill in the art. As to claim 28, the prior art does not teach having a pair of arms with a panel coupled to each arm, such a modification would destroy the reference and therefore would not be obvious to one of ordinary skill in the art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

The following is a statement of reasons for the indication of allowable subject matter: As to claim 6, while a clamp with teeth is well known, as is seen in the Hoshino patent, it would not be obvious to make the shelves as disclosed by Dispenza pivotal,. As to claim 15, the prior art does not teach having a pair of arms that a panel coupled to each arm, such a modification would destroy the reference and therefore would not be obvious to one of ordinary skill in the art.


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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US PAT 5,409,122 to Lazarus, US PAT 4,237,798 to Welsch et al., US PAT 4,132,178 to Mueller et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J Fisher whose telephone number is 703-306-5993. The examiner can normally be reached on Mon.-Fri. 7:30am-5:00pm alt Fri. off.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

MF 
May 6, 2002


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600